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*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of

Fox Television Stations, Inc.

Applications for Renewal of License of  
WWOR-TV and WNYW

File Nos. BRCT - 20070201AJT  
BRCT - 20070201AJS



PETITION TO DENY RENEWAL  
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.  
AND  
RAINBOW/PUSH COALITION

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## SUMMARY

The Office of Communication of the United Church of Christ, Inc. (UCC) and Rainbow/PUSH Coalition petition the FCC to deny Fox's renewal applications for WWOR-TV and WNYW. Despite the FCC's prohibition on the operation of both a newspaper and television station within a designated market, Fox currently operates *The New York Post* and two television stations, WWOR-TV and WNYW, in the New York metropolitan area.

First, UCC and Rainbow/PUSH Coalition urge the FCC to act on the pending Petition for Reconsideration, to rescind Fox's temporary waiver, and to deny renewal outright. In October 2006, the Commission granted Fox a second temporary 24-month waiver of the newspaper-broadcast cross-ownership ("NBCO") rule to permit Fox to continue operating both television stations and *The New York Post* after its previous 24-month waiver had expired. UCC and Rainbow/PUSH Coalition petitioned the FCC for reconsideration. If the FCC rescinds Fox's waiver, as UCC and Rainbow/PUSH Coalition seek, renewal of the licenses for WWOR-TV and WNYW would violate the plain language of the newspaper-broadcast cross-ownership rule and the applications would be defective on their face.

Alternatively, if the FCC does not grant the Petition for Reconsideration, UCC and Rainbow/PUSH Coalition urge the FCC to designate the renewal applications for a hearing because renewal would violate all three requirements of Section 309 of the Communications Act. Renewal would violate Section 309 because Fox has committed serious violations of numerous FCC rules and orders, notably the cross-ownership rule and the FCC waiver condition. In addition, Fox has violated rules governing its fundamental obligation to act with candor and those prohibiting *ex parte* communications. Because these actions constitute serious violations

and Fox's behavior demonstrates a pattern of abuse, renewal is not in the public interest.

Accordingly, if the FCC does not rescind the waiver and deny the licenses outright, the FCC should designate the applications for a hearing and then deny renewal.

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## PETITION FOR DENIAL OF LICENSE RENEWAL

The Office of Communication of the United Church of Christ, Inc. and Rainbow/Push Coalition ("Petitioners"), by their attorneys, the Institute for Public Representation, and pursuant to Section 309(d) of the Communications Act, 47 U.S.C. § 309(d), and Section 73.3584 of the FCC Rules, 47 CFR § 73.3584, hereby petition to deny the applications for broadcast license renewal of Fox Television Stations, Inc., which operates WNYW and WWOR-TV, in New York, N.Y. The FCC should grant UCC and Rainbow/PUSH's pending Petition for Reconsideration of the Commission's grant of a second 24-month waiver, rescind Fox's waiver of the cross-ownership rule, and deny renewal outright. Alternatively, because the licensee has committed serious violations of the Commission's rules, its actions constitute a pattern of abuse, and it has not demonstrated that it has served the public interest, the Commission must designate a hearing to determine if the licenses should be renewed pursuant to Sections 309(k) and 309(e).<sup>1</sup>

## PETITIONERS

UCC is a Protestant denomination comprised of nearly 6,000 congregations and more than 1.3 million members. For decades, the Office of Communication of the United Church of Christ, Inc. has been a leading force in advocating diverse and responsive local media and to ensuring that women, persons of color and low-income persons have equal access to ownership, production, employment, and decision making in media. UCC churches are located throughout the country, including the New York, New York area. Members of these churches include many regular viewers of WNYW and WWOR-TV.

Rainbow/PUSH Coalition is a multi-racial, multi-issue, international membership organization that works to further social, racial, and economic justice for individuals who are

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<sup>1</sup> See 47 U.S.C. §§ 309(e) & (k).

disenfranchised politically, socially and economically. Rainbow/PUSH Coalition has vigorously worked to ensure equal opportunity and employment in media. Members of Rainbow/PUSH Coalition include many regular viewers of WNYW and WWOR-TV.

Both UCC and Rainbow/PUSH Coalition are parties in interest within the meaning of Section 309(d)(1) of the Telecommunications Act.<sup>2</sup> As demonstrated in the attached declarations,<sup>3</sup> both organizations have members who reside within the service area of WNYW and WWOR-TV and have incurred harm as a result of the stations' failure to serve the public interest.

### FACTS

In the New York City area, Fox owns *The New York Post* daily newspaper and two broadcast stations, WWOR-TV (Channel 9, in Secaucus, New Jersey) and WNYW (Channel 5, in New York, New York). Fox has owned these outlets in violation of the newspaper-broadcast cross-ownership ("NBCO") rule and the Commission's order for a substantial portion of the prior license term.

Fox acquired WNYW in 1985. Since its parent corporation controlled *The New York Post*, the FCC required that it divest its interest in the newspaper or WNYW within two years to comply with the NBCO rule.<sup>4</sup> Fox subsequently sold *The New York Post* to real estate developer Peter S. Kalikow.<sup>5</sup> In 1993, however, after Mr. Kalikow's financial difficulties led the paper's

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<sup>2</sup> 47 U.S.C. § 309(d); see also *Llerandi v. FCC*, 863 F.2d 79, 86 (D.C. Cir. 1998).

<sup>3</sup> See Exhibit 1: Declarations.

<sup>4</sup> *Metromedia Radio & Television, Inc.*, 102 FCC 2d 1334, ¶ 40 (1985), aff'd, *Health & Med. Policy Research Group v. FCC*, 807 F.2d 1038 (D.C. Cir. 1986).

<sup>5</sup> *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975, 14985 (2001).

parent company to declare bankruptcy, Fox requested and received a permanent waiver of the NBCO rule to own the newspaper and concurrently operate WNYW.<sup>6</sup>

In 2000, Fox proposed to acquire ten television stations from Chris-Craft Industries, Inc., including WWOR-TV, a station located in the New York Designated Market Area.<sup>7</sup> In its transfer applications, Fox argued that the 1993 permanent waiver should extend to its acquisition of WWOR-TV, or in the alternative, that it should receive an “interim waiver” until the conclusion of the 2002 Biennial Regulatory Review of the Commission’s Broadcast Ownership Rules.<sup>8</sup> UCC, Rainbow/PUSH, and others opposed Fox’s acquisition of WWOR-TV.<sup>9</sup>

In July 2001, the Commission rejected Fox’s claim that the 1993 permanent waiver extended to the acquisition of WWOR-TV, pointing out that a waiver granted during one set of market conditions “is not automatically extended to cover new combinations several years later under potentially changed market conditions.”<sup>10</sup> Instead, the Commission granted a “temporary 24-month waiver within which to come into compliance with the” NBCO by divesting *The New York Post* or either of its two New York television stations.<sup>11</sup>

The two-year temporary waiver expired in July 2003, and Fox did not come into compliance with the rule. Nor does it appear that Fox made *any* effort during the 24-month period to comply. Instead, Fox lobbied the FCC to amend the NBCO rule to allow cross-

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<sup>6</sup> *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5354 (1993).

<sup>7</sup> *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14987-89.

<sup>8</sup> *Id.* at 14987.

<sup>9</sup> See Petition to Deny by The Office of Communication, Inc. of the United Church of Christ, et al., File Nos. BALCT-20000918ABB, et al., filed Oct. 27, 2000 (“Petition to Deny”).

<sup>10</sup> *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14977.

<sup>11</sup> *Id.*, 16 FCC Rcd at 14990 n. 73. The Commission justified the temporary waiver on the grounds that “[a] temporary loss of diversity, if any, in the New York market during this period will be outweighed by the benefits of permitting an *orderly sale* to a qualified buyer committed to preserving the *Post* as a media voice.” *Id.* at 14989. In an unpublished opinion, the D.C. Circuit affirmed the FCC’s ruling. It found that the FCC had made an adequate public interest finding to approve the transfer, noting that “[a]lthough Fox could not fully complete Form 314 because it required waivers, to the extent that Fox required these waivers, the Commission found that granting temporary waivers would serve the public interest, and, therefore, the acquisition was in the public interest.” *Office of Comm’n of the United Church of Christ v. FCC*, No. 01-1374, 2002 U.S. App. Lexis 23330, at \*4 (D.C. Cir. Nov. 8, 2002).

ownership. In June 2003, the Commission relaxed the NBCO rule and replaced the rule with a cross media limit allowing cross-ownership in most markets.<sup>12</sup> However, before the cross media limit took effect, the Third Circuit issued a stay on September 3, 2003, ordering that the old rule remain in effect pending judicial review.<sup>13</sup>

Even after the Third Circuit reversed the FCC in July 2004 and clarified that the NBCO would remain in effect pending judicial review of the FCC's decision on remand, Fox still did not comply with the NBCO as required by the Commission's 2001 Order. Instead, Fox retained both stations for an additional year without taking any action to divest either one. On September 22, 2004, Fox filed a "Petition for Modification of Permanent Waiver." Fox's petition requested the Commission to either permit common ownership of WWOR-TV, WNYW, and *The New York Post*, or to grant an additional temporary waiver until after the remand of the 2002 Biennial Regulatory Review.<sup>14</sup>

In 2005, while its waiver petition was pending, Fox underwent a corporate restructuring necessitating FCC approval and filed a Form 315 transfer of control application with a copy of the 2004 waiver request attached. On August 15, 2006, almost three years after the waiver expired, the FCC voted three to two to approve the transfer of control.<sup>15</sup> The Order also granted a new permanent waiver for WNYW and *The New York Post*, and granted a new temporary waiver permitting continued common ownership of WWOR-TV for an additional 24 months.<sup>16</sup> The UCC and Rainbow/PUSH filed a petition with the FCC, asking it to reconsider and reverse

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<sup>12</sup> 2002 Biennial Regulatory Review, No. 03-3388, 18 FCC Rcd 13,620, 13790-813 (2003).

<sup>13</sup> See *Prometheus Radio Project v. FCC*, 2003 U.S. App. Lexis 18390 (3d Cir. Sept. 3, 2003). In June 2004, the Third Circuit reversed and remanded the cross media limits, and ordered that the stay remain in place pending its review of the Commission's action on remand. *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372, 435 (2004).

<sup>14</sup> Petition for Modification of Permanent Waiver by Fox Television Stations, Inc., filed September 22, 2004 ("2004 Waiver Request").

<sup>15</sup> *K. Rupert Murdoch and Fox Entertainment Group, Memorandum Opinion and Order*, 21 FCC Rcd 11499 (2006) ("October 2006 Order").

<sup>16</sup> October 2006 Order, at ¶ 1. The FCC has withheld the dissents of both Commissioners Adelstein and Copps.



that decision. The Petition for Reconsideration, attached as Exhibit 2 to this Petition to Deny, is still pending.

## **ARGUMENT**

The FCC should act on the pending Petition for Reconsideration, rescind the waiver of the NBCO rule, and reject Fox's renewal applications outright. Alternatively, because renewal is contrary to the public interest in light of Fox's serious violation of the NBCO rule, rules governing candor before the FCC and *ex parte* communications, and demonstrated pattern of abuse, the FCC should designate the licenses for an evidentiary hearing and, ultimately, deny the license renewal applications.

### **I. THE FCC SHOULD ACT ON THE PENDING PETITION FOR RECONSIDERATION BEFORE CONSIDERING FOX'S RENEWAL APPLICATIONS**

Before acting upon the license renewal applications, the FCC should first act on the Petition for Reconsideration filed by UCC and Rainbow/PUSH on November 6, 2006. The petition asked the FCC to reconsider its October 6, 2006 decision to grant a new 24-month temporary waiver of the newspaper/broadcast cross-ownership rule permitting Fox to own two television stations, WWOR-TV and WNYW, and *The New York Post*.

In the 2006 Order, the FCC identified two grounds for granting a new waiver for WWOR-TV—(1) to avoid a forced sale at an artificially depressed price ("fire sale") and (2) to ensure Fox's continued investment in *The New York Post*.<sup>17</sup> However, as UCC and Rainbow/PUSH Coalition argued in the Petition for Reconsideration, neither reason is supported by the record in this case. First, because the Commission gave Fox 24-months to avoid a fire

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<sup>17</sup> October 2006 Order, at ¶¶ 6–8.

sale in July 2001, Fox had *five years* to avoid a fire sale, and it failed to demonstrate that it was unable to sell (or able to sell only at an artificially depressed price) either *The New York Post* or one of the broadcast stations. Second, Fox did not make any showing, nor could it, that cross-ownership of two, powerful VHF stations was necessary to the survival of the *The New York Post*.

The FCC should act on the Petition for Reconsideration and rescind the additional 24-month waiver. Because Fox will then be out of compliance with the NBCO rule, the FCC should deny the licenses outright. As the Supreme Court held in *FCC v. National Citizens Committee for Broadcasting*, “[i]f a license applicant does not qualify under standards set forth in [FCC] regulations, and does not proffer sufficient grounds for waiver or change of those standards, the Commission may deny the application without further inquiry.”<sup>18</sup>

## **II. GRANTING FOX’S APPLICATIONS FOR RENEWAL WOULD VIOLATE SECTION 309 OF THE COMMUNICATIONS ACT**

Even if the FCC denies the Petition for Reconsideration, granting Fox’s application for renewal would nonetheless violate Section 309 of the Communications Act. Section 309(k) provides that the Commission may grant a license renewal application only if, upon consideration of the application and pleadings, it finds that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>19</sup> Under 309(d), “if the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice” that “a substantial or material question of fact is presented or if the Commission for any other reason is unable to find that grant of the application would be consistent with” the public interest, it must designate the application for

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<sup>18</sup> 436 U.S. 775, 793 (1978).

<sup>19</sup> 47 U.S.C. § 309(k); *see also* 47 U.S.C. § 309(a).

hearing pursuant to Section 309(e).<sup>20</sup> Because Fox fails to meet all three criteria of Section 309(k), the Commission must proceed to an evidentiary hearing and deny the license.

**A. Fox Has Committed Serious Violations of FCC Rules**

The FCC should designate the applications for a hearing and deny the license because Fox has committed serious violations of the NBCO rule, its duty of candor, and rules governing *ex parte* communications. A serious violation occurs when a licensee's station operation is "conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies."<sup>21</sup> Fox has conducted itself with a careless indifference to the prohibition on cross-ownership and has demonstrated an unwillingness to correct its deficiencies. Moreover, in failing to come into compliance with the NBCO rule, Fox has violated its duty of candor before the commission by misrepresenting facts on its license renewal and transfer applications and violated rules governing *ex parte* communications.

**1. Fox was in violation of the NBCO rule and the FCC's Order for three years without making any effort to comply**

The NBCO rule states that "No license for a . . . TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls . . . a daily newspaper and the grant of such license will result in the Grade A contour of a TV station encompassing the entire community in which the newspaper is published."<sup>22</sup> When adopting the rule, the FCC noted that "licensing of a newspaper applicant

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<sup>20</sup> 47 U.S.C. § 309. *see Astroline Commc'n. Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

<sup>21</sup> *See Mark Hellinger*, 2007 FCC LEXIS 1508, \*8, n. 14 (January 31, 2007); *Heart of the Black Hills Stations*, 32 FCC 2d 196, 198 (1971).

<sup>22</sup> 47 CFR § 73.3555(d) (2002). "The formation of new TV-combinations in the same market is barred . . . They are considered to be in the same market if the Grade A contour of the TV station completely encompasses the community in which the newspaper is published." *Amendment of Sections 73.3, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, 50 FCC 2d 1046, 1132 (1975) ("1975 Second Report and Order").

for a new station in the same city as that in which the paper is published is not going to add to already existing choices, is not going to enhance diversity.”<sup>23</sup>

Recognizing that Fox’s control of three media outlets within one market reduced diversity in its 2001 Order, the Commission granted Fox 24 months to comply with the NBCO rule and avoid a fire sale.<sup>24</sup> In clarifying that Fox had the option of divesting either station or the *Post*, the FCC stated that it was not directing the sale of the *Post* but “simply requiring that [Fox] be in compliance with our television/newspaper cross-ownership rule within 24 months from the consummation of the transaction.”<sup>25</sup> There was no ambiguity in the Commission’s directive. Indeed, in defense of the FCC’s action, on appeal of that order, Fox’s legal brief explicitly assured the D.C. Circuit that it understood what was required: “The two-year waiver is not a free pass; it is a temporary arrangement crafted by the Commission to allow Fox time to locate a new buyer for a fragile, money-losing enterprise.”<sup>26</sup> Despite this statement, Fox made no effort to comply with the FCC’s order. Not only did Fox not comply, but it failed to ask for an additional waiver for more than one year after the date by which it should have complied. As a result, Fox was in violation of the rule from July 2003 (when the 24-month waiver expired) until October 2006 (when the FCC released its order granting a new 24-month waiver). Thus, Fox violated the NBCO rule, as well as a condition of its license transfer.

## **2. Fox has violated its fundamental obligation to act with candor and trustworthiness**

In addition to ignoring the cross-ownership rule and the FCC’s directive, Fox’s conduct evidences a lack of candor with the Commission. The Commission rules require that no person

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<sup>23</sup> *Id.* at 1075.

<sup>24</sup> *UTV of San Francisco, Inc.*, 16 FCC Rcd at 14990 n. 73.

<sup>25</sup> *Id.*

<sup>26</sup> Brief for the Intervenor Supporting Appellee by Fox Television Stations, Inc., No. 01-1374, filed July 15, 2002 (“Brief for the Intervenor”).

“intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.”<sup>27</sup> Because the Commission “has an affirmative obligation to license more than 10,000 radio and television stations in the public interest, . . . the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate.”<sup>28</sup> In fact, since the Supreme Court’s 1946 decision in *Federal Communications Commission v. WOKO, Inc.*, “it has been clear that the Commission may refuse to renew a license where there has been willful and knowing misrepresentation or lack of candor in dealing with the Commission.”<sup>29</sup>

Even slight misstatements can produce serious consequences, as the Commission may treat even the most insignificant misrepresentation as an event disqualifying a licensee from further consideration.<sup>30</sup> And candor is of such critical importance that the Commission traditionally reserves its harshest sanction, complete termination of a licensee’s rights, for instances in which the licensee has demonstrated a “pervasive pattern of misrepresentation especially when conjoined with . . . flagrant disregard of the rules.”<sup>31</sup> Consequently, the Commission has denied license renewal or designated the application for a hearing in a variety of situations involving lack of candor about rule violations: for instance, where a station falsified transmission logs after the licensee failed to perform transmission tests,<sup>32</sup> where a station

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<sup>27</sup> 47 CFR §1.17. See also Policy Regarding character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1227-29 (1985) (“Character Policy Statement”).

<sup>28</sup> *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981). See also *Sea Island Broadcasting Corp.*, 60 FCC 2d 146, 148 (1976).

<sup>29</sup> *Leflore Broadcasting Company Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980) (citing *WOKO, Inc.*, 329 U.S. 223 (1946)).

<sup>30</sup> Character Policy Statement, 102 FCC 2d at ¶ 61.

<sup>31</sup> *Faulkner Radio, Inc.*, 88 FCC 2d. 612, 616 (1981).

<sup>32</sup> *Nick J. Chaconas*, 28 FCC 2d 231 (1971) (denying license renewal application).

falsified log entries after failing to satisfy station operator requirements,<sup>33</sup> and where a licensee misrepresented the success and extent of its efforts to restore broadcasting service to residents.<sup>34</sup>

In violation of its obligation of candor, Fox misstated its failure to comply with the NBCO rule on its renewal applications. In the renewal application for both WWOR-TV and WNYW, Fox certifies “that, with respect to the station(s) for which renewal is requested, there have been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the Commission during the preceding license term.”<sup>35</sup> Despite certifying to the contrary, Fox’s violation of the NBCO rule for over three years is indisputable.

In addition, Fox lacked candor concerning its transfer application. On the Form 315 Fox submitted in 2005 regarding its transfer, Fox falsely certified “that the proposed transfer complies with the Commission’s . . . cross-ownership rules” when it did not.<sup>36</sup> Moreover, Fox stated in an exhibit to the transfer application that it was granted a 24-month temporary waiver of the NBCO in 2001 and that in September 2004, it sought an extension of that waiver.<sup>37</sup>

However, Fox did not disclose that its September 2004 request was objected to by Free Press. And while Fox attached a copy of its September 2004 waiver request, it did not attach Free Press’ objection, or Fox’s own sixteen page opposition to Free Press’s objection. The omission of this material fact violates FCC Rule 1.17 and seems to be intended to mislead the Commission. The fact that the Commission’s October 2006 Transfer Order characterizes Fox’s

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<sup>33</sup> *Lewel Broad., Inc.*, 86 FCC 2d 896 (1981) (denying license renewal application).

<sup>34</sup> *Calvary Ed. Broad. Network*, 7 FCC Rcd 4037, 4040 (1992) (finding a material question of fact existed regarding the truthfulness of the licensee’s representations).

<sup>35</sup> FCC 303-S, Application for Renewal of Broadcast Station for WNYW (February 21, 2007), BRCT – 20070201AJS § II(4); FCC 303-S, Application for Renewal of Broadcast Station for WWOR-TV (February 1, 2007, BRCT – 20070201AJT § II(4). And while the WYNW application states that Exhibit 6 provides further explanation, Exhibit 6 merely refers viewer comments on Fox’s airing of indecent material. FCC 303-S, Application for Renewal of Broadcast Station for WNYW (February 21, 2007), BRCT – 20070201AJS, Attachment 6.

<sup>36</sup> FCC Form 315 (Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License Question 8(b)) (Sept. 21, 2005), BTCCT – 20050819AAF.

<sup>37</sup> *See id.*

applications as “unopposed” suggests that the Commission was misled by Fox’s lack of candor.<sup>38</sup>

In its transfer application, Fox also misrepresented the circumstances in which the FCC previously granted the 24-month waiver. It implied that the FCC granted the 24-month waiver because of the pending proceedings reviewing the NBCO rule.<sup>39</sup> In fact, the FCC rejected that reason and instead granted the temporary waiver to give Fox time to comply with the rule while avoiding a “fire sale.”<sup>40</sup>

### 3. Fox appears to have violated *ex parte* rules

In addition to misrepresentation on renewal and transfer applications, Fox also appears to have violated *ex parte* rules. The Commission’s *ex parte* rules forbid all *ex parte* presentations to Commission decision-making personnel in “restricted proceedings” and the Commission considers such infractions serious violations that may justify denial of a license renewal application.<sup>41</sup> Fox’s 2004 waiver request was a restricted proceeding and thus any *ex parte* communication related to the waiver was impermissible.<sup>42</sup> Yet, Fox, a sophisticated party with adequate legal representation, acted willfully to subvert the *ex parte* rules on at least two

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<sup>38</sup> October 2006 Order, at ¶ 1.

<sup>39</sup> FCC Form 315, Exhibit 18 at 8 (“At the time, the 24-month waiver seemed to [Fox] to be more than adequate in duration to permit the Commission to complete proceedings looking toward repeal of the NBCO rule.”).

<sup>40</sup> See *Metromedia Radio & Television, Inc.*, 102 FCC 2d 1334, at ¶ 40 (1985).

<sup>41</sup> *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 845 (D.C. Cir. 1970).

<sup>42</sup> Restricted proceedings” include “applications for authority under Title III of the Communications Act, and all wavier proceedings (except those directly associated with tariff filings).” See 47 C.F.R. § 1.1202(b)(1) and § 1.1208, n.1; see also *Cumulus Licensing Corp.*, 16 FCC Rcd 1052, n.7 (2001) (holding that a third party’s objection ended an uncontested transfer application period and set into effect *ex parte* rules). On April 15, 2005, Free Press became a party to the proceeding when it filed an objection to Fox’s waiver and served the objection on counsel for Fox. Free Press Objection. Fox acknowledged Free Press’s objection by filing an opposition on May 10, 2005. See Opposition to Free Press Objection. Thus, once Free Press filed its objection, the *ex parte* rules prohibited all non-exempt *ex parte* presentations to Commission decision-making personnel. In fact, Free Press’s objection explicitly provided, “By filing this letter objecting to Fox’s waiver request, Free Press becomes a party as defined in 47 C.F.R. § 1.1202(d) and henceforth, all *ex parte* presentations to or from Commission decision-making personnel are prohibited under 47 C.F.R. § 1.1208. Free Press has served this letter on counsel for Fox as required by 47 C.F.R. 1.1202(b)(1).” Free Press Objection at 4.

occasions.<sup>43</sup> On or about May 30, 2006, we believe, Rupert Murdoch personally met with several FCC commissioners and discussed the waiver of the NBCO rule. Additionally, counsel for Fox communicated with staff from at least one Commissioner's office regarding the substance of the waiver request and the need for prompt action during the summer of 2006. Even though this issue was raised on Reconsideration, Fox never denied that these communications occurred.

Overall, Fox has committed serious violations of three significant FCC rules, notably the Commission's cross-ownership limit as well as rules governing candor and *ex parte* communications. Fox has committed these violations to avoid the NBCO rule and operate three media outlets in New York. These infractions rise to the level of serious violations because they have significant detrimental impact on the diversity of viewpoints available to the viewing public and demonstrate Fox's unwillingness to comply with the Commission's rules.<sup>44</sup>

**B. Fox's Actions, Taken Together, Constitute a Pattern of Abuse, and Renewal is Not in the Public Interest**

Fox's operation of WWOR-TV and WNYW also violates 309(k) because the conduct illustrated above demonstrates a pattern of abuse.<sup>45</sup> Section 309(k) provides that the Commission may grant a license renewal application only if, upon consideration of the application and pleadings, it finds that there have been no other violations which, taken together,

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<sup>43</sup> Cf. *In re NEW (Ed. FM) & WJMU(FM)*, FCC Order, DA 07-1952 (April 30, 2007) (admonishing MU, a small noncommercial educational licensee not represented by FCC counsel, for violation of the *ex parte* rules after the broadcaster communicated with FCC personnel and solicited the assistance of Members of Congress without notifying the opposing party; the FCC declined to take further action because while willful, the broadcaster acted out of ignorance rather than an intent to subvert the rules).

<sup>44</sup> In addition to misrepresenting facts on applications and engaging in prohibited *ex parte* communications, Fox has repeatedly failed to notify parties in the proceedings when petitioning the FCC for waivers. Despite the years of litigation between UCC and Rainbow/PUSH Coalition and Fox over the New York waiver, Fox failed to serve UCC and Rainbow/PUSH Coalition's counsel with a copy of the petition for a waiver for WWOR in 2004. Similarly, when Fox filed a Form 315 "transfer of control" application with the Commission in September 2005, which includes the prior waiver request, Fox did not serve the transfer application on counsel for UCC and Rainbow/PUSH Coalition. FCC Form 315 Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License (Sept. 21, 2005), File No. BTCCT - 20050819AAF.

<sup>45</sup> See 47 U.S.C. §309(k)(2).




constitute a pattern of abuse.<sup>46</sup> Conduct constitutes a pattern of abuse when “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.”<sup>47</sup> Here, Fox has demonstrated an indifference to the cross-ownership rule, rules governing candor, and prohibitions on *ex parte* communications. Even if any individual infraction did not rise to the level of a serious violation, the conduct on the whole demonstrates that Fox cannot be relied upon to comply with the Commission’s rules and regulations.

Finally, 309(k) conditions renewal on the Commission’s finding that the station has served the public interest, convenience, and necessity.<sup>48</sup> Here, renewal would contravene rather than advance the public interest. Because Fox violated significant FCC rules, especially the cross-ownership rule, and these violations constitute a pattern of abuse, renewing Fox’s WWOR-TV and WNYW licenses is presumptively not in the public interest.

### CONCLUSION

For the foregoing reasons, the FCC should grant the Petition for Reconsideration, rescind the license, and deny renewal. In the alternative, because Fox has not met the standard set forth in Section 309(k), the FCC should designate the applications for an evidentiary hearing.

Respectfully Submitted,



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Of Counsel:

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<sup>46</sup> 47 U.S.C. § 309(k).

<sup>47</sup> *Heart of the Black Hills Stations*, 32 FCC 2d at 200, ¶ 11. See also *Ctr. for Study and Application of Black Econ. Dev.*, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, 7 FCC Rcd 4037 (1992).

<sup>48</sup> 47 U.S.C. § 309(k).

Avra C. van der Zee  
Georgetown University Law Center  
Law Student

Counsel for UCC and Rainbow/PUSH  
Coalition

Dated: May 1, 2007

# EXHIBIT 1


### DECLARATION

- 1) My name is Robert Chase. I am the liaison between the Office of Communication, Inc. and the United Church of Christ.
- 2) The United Church of Christ (UCC) is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.2 million people of whom a significant number are racial minorities. UCC members reside throughout the New York metropolitan area, including New Jersey, and in many other communities throughout the United States.
- 3) The Office of Communication, Inc. is a not-for-profit corporation of the United Church of Christ charged with responsibility for developing the Church's policies in media advocacy. Since the mid-1950's, the Office of Communication, Inc. has participated in proceedings before the Federal Communications Commission to promote a diversity of viewpoints, a greater role for citizens in Commission regulatory proceedings, and more minority involvement in the electronic mass media industries.
- 4) UCC has consistently opposed Fox's acquisition of WWOR-TV, Secaucus, New Jersey. UCC filed a Petition to Deny Fox's acquisition of WWOR-TV from Chris-Craft Industries in October 2000. In its petition, UCC challenged Fox's claim that its permanent waiver of the Newspaper/Broadcast Cross-Ownership (NBCO) rule to operate *The New York Post* and WNYW(TV) extended to WWOR-TV. UCC also opposed Fox's request in the alternative for an interim waiver for WWOR-TV until after the 2002 Biennial Review. After the Commission granted Fox a twenty four month temporary waiver to divest one their New York area broadcast stations or the *Post*, UCC appealed the FCC decision to grant a temporary waiver in the U.S. Court of Appeals for the D.C. Circuit.
- 5) UCC has continued to oppose Fox's cross-ownership. In 2006, the Commission granted Fox another two-year waiver of the NBCO rule. Along with Rainbow/PUSH, UCC filed for reconsideration, urging the FCC to reverse its decision and require divestiture.
- 6) I have reviewed the foregoing Petition to Deny. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 7) A decision to renew the license of WWOR-TV or WNYW(TV) harms members of UCC who reside within the New York metropolitan area. Renewal will reduce the number of independently controlled sources of local news and public affairs that would be available had Fox complied with the FCC's 2001 Order to adhere to the NBCO by July 2003. Members of UCC residing in the New York area will be harmed by the loss of diversity and competition that will result if Fox is permitted to continue holding WWOR-TV along with WNYW(TV) and the *Post*. Members will be deprived of an independent voice in the media.
- 8) UCC members residing in New Jersey are harmed by consistently inferior local news coverage by WWOR-TV even though WWOR-TV was intended to serve citizens of New Jersey.

- 9) This Declaration has been prepared in support of the foregoing Petition to Deny and is filed on the behalf of members who are local residents.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.


Date Executed: 4/30/07

  
The Rev. Robert Chase  
Executive Director  
Office of Communication of the United  
Church of Christ, Inc.

## DECLARATION

1. My name is Rev. Sherry M. Taylor, and I am the Associate Conference Minister for the Association of New Jersey in the United Church of Christ's Central Atlantic Conference ( 916 South Rollong Road, Baltimore, Maryland 21228)
2. I work at 195 Ridgewood Ave., Glen Ridge, NJ 07028.
3. I am a regular viewer of the television stations serving the New York area, including WWOR-TV and WNYW(TV), as well as a regular reader of newspapers serving the New York area including *The New York Post*.
4. Fox's common ownership of *The New York Post*, WNYW(TV), and WWOR-TV harms me by sharply reducing the number of independent voices available to me. Unless the licenses are denied, my right to access diverse programming will continue to be harmed.
5. WWOR-TV does not provide me and my family with adequate local news coverage of New Jersey. Fox's ownership of WWOR-TV has limited the amount and diversity of coverage of local news and public affairs in New Jersey.
6. This Declaration has been prepared in support of the foregoing Petition to Deny.
7. This statement is true to my personal knowledge, and is made under penalty of perjury of laws of the United States of America.

Date Executed: \_19 April 2007


  
Rev. Sherry M. Taylor

## DECLARATION

- 1) My name is the Reverend Jesse L. Jackson, Sr. I am the Founder and President of the Rainbow/PUSH Coalition.
- 2) The Rainbow/PUSH Coalition is a multi-racial, multi-issue, international membership organization that works to further social, racial, and economic justice for individuals who are disenfranchised politically, socially and economically. The Rainbow/PUSH Coalition has vigorously worked to ensure equal opportunity and employment in media.
- 3) The Rainbow/PUSH Coalition has consistently opposed Fox's acquisition of WWOR-TV, Secaucus, New Jersey. The Rainbow/PUSH Coalition filed a Petition to Deny Fox's acquisition of WWOR-TV from Chris-Craft Industries in October 2000. In its petition, the Rainbow/PUSH Coalition challenged Fox's claim that its permanent waiver of the Newspaper/Broadcast Cross-Ownership (NBCO) rule to operate *The New York Post* and WNYW(TV) extended to WWOR-TV. The Rainbow/PUSH Coalition also opposed Fox's request in the alternative for an interim waiver for WWOR-TV until after the 2002 Biennial Review. After the Commission granted Fox a twenty four month temporary waiver to divest one their New York area broadcast stations or the *Post*, the Rainbow/PUSH Coalition appealed the FCC decision to grant a temporary waiver in the U.S. Court of Appeals for the D.C. Circuit.
- 4) Rainbow/PUSH Coalition has continued to oppose Fox's cross-ownership. In 2006, the Commission granted Fox another two-year waiver of the NBCO rule. Along with the United Church of Christ, Rainbow/PUSH Coalition filed for reconsideration, urging the FCC to reverse its decision and require divestiture.
- 5) I have reviewed the foregoing Petition to Deny. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 6) A decision to renew the license of WWOR-TV or WNYW(TV) harms members of the Rainbow/PUSH Coalition who reside within the New York metropolitan area. Renewal will reduce the number of independently controlled sources of local news and public affairs that would be available had Fox complied with the FCC's 2001 Order to adhere to the NBCO by July 2003. Members of the Rainbow/PUSH Coalition residing in the New York area will be harmed by the loss of diversity and competition that will result if Fox is permitted to continue holding WWOR-TV along with WNYW(TV) and the *Post*. Members will be deprived of an independent voice in the media.
- 7) Rainbow/PUSH Coalition members residing in New Jersey are harmed by consistently inferior local news coverage by WWOR-TV even though WWOR-TV was intended to serve citizens of New Jersey.
- 8) This Declaration has been prepared in support of the foregoing Petition to Deny and is filed on the behalf of members who are local residents.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: April 18, 2007

A handwritten signature in cursive script that reads "Jesse L. Jackson, Sr.".

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Reverend Jesse L. Jackson, Sr.  
Founder and President  
Rainbow PUSH Coalition



## EXHIBIT 2